

1387
K. Ann.
Pro Aris & Focis.

**T H E
IMPORTANT QUESTION
S T A T E D.**

LAY THE AXE TO THE ROOT.

MOYCASHEL ASSOCIATION.

— Nor can Imagination form a Question more interesting or necessary, unless it were a Bill declarative of the Rights of this oppressed Kingdom, and asserting the **LEGISLATIVE AUTHORITY** of **IRELAND** to be vested solely in its **KING, LORDS and COMMONS.**

BANDON VOLUNTEERS.

— Nor does it yet appear that these Propositions, although they should be passed into Laws, are adequate to the just Demands, and a full Redress of the Grievances of this Country.

LAWYERS CORPS.

— If ever there was a Moment of Time big with the very Fate of any Nation, the present is that Moment to **IRELAND.**

OWEN ROE O'NIAL.

— and after **GREAT-BRITAIN** hath ratified an Extension of the *Commerce* of **IRELAND**, and it shall be found by Experience that **IRELAND** can *undersell*, and consequently *prejudice* **ENGLAND**, *partial Restrictions* may be so *laid on*, as to preserve an *Equalization*, and prevent any ill Consequence to **ENGLAND.**

POSTLETHWAITE.

— Our *Constitution* can never be *free*, whilst any *foreign* Power imposes Laws either on our *Trade*, or on our *internal Police.*

BOLTON'S IMPORTANT QUESTION STATED.

— There is a Time
When e'en the Slave at Heart shall spurn his Chains,
Nor know Submission more.

THOMSON.

— The *Irish Parliament* disown the *Supremacy* of that of *Great-Britain*, they cannot constitutionally acquiesce in these Propositions.

Late Lord LYTTELTON.

A FREE AND UNLIMITED TRADE, A PERFECT INDEPENDENCE, A TOTAL EXTINCTION OF THE PUBLIC DEBT AND PENSION LIST, A POWER TO FRAME OUR OWN CONSTITUTION CIVIL AND RELIGIOUS.

Vox Populi, Vox Dei.

**D U B L I N :
C. J A C K S O N ,**

1789,

THE

IMPORTANT QUESTION

OF THE



EDWARD
J. L. G. O.

E X T R A C T S
FROM THE JOURNALS
OF THE
PARLIAMENT OF IRELAND.

April 10th, 1644.

IT is this day ordered by the Lords, &c. that Mr. Justice MAYART, and Mr. Baron HILTON, do repair to the House of Commons to-morrow morning, with the Book entitled, "A Declaration How, and by what Means, the Laws and Statutes of England, came to be of Force in Ireland," and desire that House to take the said Book into consideration, and to appoint a Committee to meet a Committee of this House, to have a conference touching the said Book.

April 12th, 1644. Mr. Justice Mayart reports, that they delivered the message of this House yesterday to the House of Commons, together with the Book, and that they say they will take it into consideration, and return an answer by Messengers of their own.

April 16th, 1644. The Earl of Roscommon moves, that there be a message sent to the Commons, to let them know, that they have expected them here these three days, and to know what they have done with the Book then sent them, and what they should expect therein.

April 17th, 1644. A message from the Commons. Mr. Recorder acquaints the Lords, that the House of Commons appointed this morn at six o'Clock to treat of the Book sent down by this House to the Commons; and the said House being full, the said Book was read through, and after debating it was resolved, that those of the Long Robe
of

of that House should take it into consideration by the next Session, and that, to that end, they laid a command upon their clerk to get copies made of it; and desire, that the Judges who attend this House may likewise take the same into consideration, whereby it may be better discussed by next session.

April 18th, 1644. The Lord Chancellor propounds, that there be an answer sent to the Commons, in answer to Mr. Recorder's message yesterday, viz. that this House thinks fit, according to their desire, that the Judges here do join with those of the Long Robe of that House, *privately* to take into consideration the Book entitled "A Declaration, &c." by the next session. Mr. Justice Mayort reports, that they delivered the message of this House to the Commons, and saith, that they do well allow of the course propounded by this House touching the joining those of the Long Robe of this House with those of that House; to consider *privately* of the Book entitled "A Declaration, &c."

It does not appear by the Journals what proceedings were had upon this occasion, nor what resolutions the two Houses came to upon the conference. The Parliament was prorogued to the 6th of May, from thence to the 4th of June, and then to the 11th of July; and the 15th Session, which was that appointed to meet on the 11th of July, is wanting in the Journals; and it visibly appears that a leaf was torn out in the place where the proceedings of the said session were entered, and the same of the 25th session. And the Journals of the Commons of 1644 are all wanting, so that if any Resolutions on this subject were entered in either of the said places, we are left in the dark what they were.

Dublin, 20th Dec.

1779.

THE EDITOR.

DECLARATION,

SETTING FORTH

How, and by what Means,

THE

LAWS AND STATUTES OF

ENGLAND,

FROM TIME TO TIME,

CAME TO BE OF FORCE IN

IRELAND.

KING HENRY the second, in the 18th year of his reign, conquered the Kingdom of *Ireland* from the *Irish*, and placed there many of the *British*, and granted the City of *Dublin* to the Men of *Bristol* to inhabit, and returned into *England*; and afterwards in the 23d year of his reign by Parliament constituted his son *John*, who afterwards was King of *England*; to be King of *Ireland*, and granted to him and his heirs the whole Kingdom; and in the 26th year of his reign sent him into *Ireland*, with a great train of young Gallants, he being then but 12 years of age, who used the *Irish* with such

B

disdain

disdain and derision, that the *Irish* took occasion thereat to revolt from him and his Government; so as shortly after he returned back again into *England* without doing any remarkable thing: But notwithstanding his creation to be King, yet during the life of King *Hen.* 2d. and *Rich.* 1st. he was stiled in his several charters by the name of *Dominus Hiberniæ*,—Lord of *Ireland*,—and not King, until after the death of King *Rich.* 1st. as appears by several charters by him granted to the City of *Dublin*, in the first whereof, being without date, he is stiled, *Johannes, filius Domini Regis Angliæ, et Dominus Hiberniæ.*—i. e. John, son of our Lord the King of *England*, and Lord of *Ireland*. And in the second, bearing date at *London* the 15th of *May* Anno 3d. *Rich.* the 1st. he is stiled, *Johannes, Dominus Hiberniæ, Comes Mortonæ.*—i. e. John, Lord of *Ireland*, and Earl of *Morton*. And in a third charter granted to the City of *Dublin*, bearing date at *Upton* the 7th day of *February*, in the 2d. year of his reign, he is stiled,

“ *Johannes, Dei Gratia, Rex Angliæ, Dominus Hiberniæ, Dux Normandiæ, et Aquitaniæ, et Comes Andegaviæ.*”—i. e. John, by the Grace of God, King of *England*, Lord of *Ireland*, Duke of *Normandy* and *Aquitain*, and Earl of *Anjou*.

And afterwards in the 12th year of his reign he came again into *Ireland*, and brought with him many learned persons in the Law, and other Officers, and Ministers of all sorts, and established the form of Civil Government to be according to the Laws of *England*, as appears in the first book of Institutes of the Lord *Cooke*, fol. 141; and in the Lord *Cooke's* 7th Report, fol. 22. in *Calvin's Case*, extracted out of the Patent Roll of 11th *Hen.* 3d. Membran. 3. the words are these,

“ Rex,

“ Rex, &c. baronibus, mi-
 “ litibus, et omnibus libe-
 “ re tenentibus, Salutem.
 “ Satis, ut credimus, ves-
 “ tra audivit discretio, quod
 “ quando, bonæ memoriæ,
 “ Johannes, quondam Rex
 “ Angliæ, pater noster,
 “ venit in Hiberniam, ipse
 “ duxit secum viros discre-
 “ tos, et in lege peritos,
 “ quorum communi Consi-
 “ lio, et ad instantiam Hi-
 “ bernensium, statuit et
 “ præcepit legis Anglicanas
 “ in Hibernia, ita quod le-
 “ ges easdem, in Scriptu-
 “ ras redactas reliquit sub
 “ Sigillo suo ad Scaccari-
 “ um Dublin.”

The King, &c. to the
 Barons, Knights, and all
 his Freeholders, greeting.
 Your Wisdoms, as we be-
 lieve, have sufficiently been
 informed, that when *John*
 formerly King of *England*,
 our Father, of happy me-
 mory, came into *Ireland*,
 he brought with him dis-
 creet Men, skilled in the
 Laws, by whose concurrent
 advice, at the request of
 the *Irish*, he ordained and
 commanded the Laws of
England to be observed in
Ireland, and left the said
 Laws, reduced into writ-
 ing, under his Seal in the
 Exchequer at *Dublin*.

And in another record in 13. *Edw.* cited by the
 Lord *Cooke* in the first book of his *Institutes*, fol.
 141, it followeth in these words, viz.

“ Una et eadem Lex esse debet, tam in Regno
 “ Angliæ, quam Hibernia.”—One and the same
 Law ought to be observed both in *England* and *Ireland*.

And in 2d. of *Rich.* 3d. fol. 12.

Terra *Hiberniæ* habet Par-
 liamentum, prout in *Anglia*,
 et per idem Parliamentum
 facit leges, et mutat leges,
 et illi de eadem terra non
 obligantur per Statutum in
Anglia, quia hii non habent
 milites Parlamenti.

The land of *Ireland* has a
 Parliament, as in *England*,
 and by the same Parliament
 makes laws, and changes
 laws; and the people of
 that land are not bound by
 a Statute made in *England*,
 because they have not
 therein Knights of Parlia-
 ment.

And

And likewise in Rot. patent, 30. *Hen.* 3. it is recorded,

“ Rex, &c. quia pro Com-
 “ muni utilitate terræ *Hi-*
 “ *bernæ*, et pro unitate
 “ terrarum, provisum est,
 “ quod omnes leges et Con-
 “ suetudines, quæ in Reg-
 “ no *Angliæ* tenentur, in
 “ *Hiberniâ* teneantur, et
 “ eadem terra iisdem legi-
 “ bus subjaceat, et per
 “ easdem regatur, sicut *Jo-*
 “ *hannes* Rex, cum illic
 “ esset, Statuit, et firmiter
 “ Mandavit; ideo volumus,
 “ quod omnia brevia
 “ de communi jure, quæ
 “ currunt in *Angliâ*, simi-
 “ liter currant in *Hiberniâ*,
 “ sub novo Sigillo Regis.
 “ In cujus &c. teste me ip-
 “ so apud *Woodstock*.”

The King, &c. because for the common interest of the land of *Ireland*, and for the unity of both Countries, it is provided that all laws and customs, which are observed in the Kingdom of *England*, should be observed in *Ireland*, and that the said land should be subject to, and be governed by the same laws, as *King John*, when he was there, ordained, and firmly commanded; therefore we will, that all writs at common Law which run in *England*, should in like manner run in *Ireland* under the King's new seal. In testimony whereof &c. Witness myself at *Woodstock*.

So as now the common Laws of *England* became the proper Laws of *Ireland*; and because they have Parliaments holden there, whereat they have made divers particular Laws concerning that Dominion, as it appears in 2d. *Hen.* 6. fol. 8. and 20 *Eliz.* Dier fol. 360, and by the resolution of *Calvin's* case, *Cooke*, li. 7. fol. 23. it appears, that *Ireland* is governed by laws and customs separate and divers from the laws of *England*; which proveth, that it is a distinct Dominion, separate from the Kingdom of *England*; and although the ordinance of *King John* for the establishment of the laws of *England* in the Kingdom of *Ireland*, be several, yet it is manifest, that the common Law of *England* was only

only put in execution in those parts of *Ireland*, which were reduced and divided into Counties and not in the *Irish* Countries or Territories, which were not reduced into Counties or Shire Grounds until the time of Queen *Mary*, and Queen *Elizabeth*. For King *John* made but 12 Counties, all which were in *Leinster* and *Munster*, viz. in *Leinster*, the Counties of *Dublin*, *Meath*, *Uriel*, now called *Lowth*, *Kildare*, *Katherlagh*, *Kilkenny*, and *Wexford*, which contain all the Province of *Leinster*, except these Territories following, viz. upper *Offory*, which was inhabited by the *Fitzpatricks*, *Leix*, which was inhabited by the *Moore*s, *Offaly*, which was inhabited by the *O-Connors*, *Ely O-Carroll*, which was inhabited by the *O-Carolls*, and some other Territories, which were inhabited by other Irish Septs; and in *Munster*, the Counties of *Waterford*, *Kork*, *Kerry*, *Limerick*, and *Tipperary*; which last mentioned 5 Counties do contain the whole Province of *Munster*. The Territories of *Leix*, *Offaly*, and *Ely O-Carroll*, and some others, were reduced into Counties in the time of Queen *Mary*; and then the same were divided into two Counties, the one called the *Queen's County*, the other the *King's County*. So likewise the Province of *Connaught*, and *Ulster*, after the 11th year of Queen *Elizabeth*, were divided into several Counties, according to a Statute made to that purpose in 11th *Eliz.* Chap. 9. that is to say, *Connaught* was divided into 7 Counties, (viz.) the County of *Galway*, the County of *Clare*, the County of *Koscommon*, the County of *Mayo*, the County of *Sligo*, the County of *Longford*, and the County of *Leitrim*. And in the like manner, the Province of *Ulster* was divided into nine Counties; namely, the County of *Downe*, the County of *Antrim*, the County of *Tyrone*, the County of *Ardmagh*, the County of *Monaghan*, the County of *Cavan*, the County of *Fermanagh*, the County of *Donegal*, and the County of *London-derry*:

derry: so as now, all impediments being so removed, that the laws of *England*, and the King's Writ may have free passage through all the parts of *Ireland*, it is to be considered in the first place, upon how many parts the laws of *England* do consist, and how from time to time by several degrees they have been made of force in the Kingdom of *Ireland*.

These laws of *England* consist of three parts, first, of the general customs of the kingdom of *England*, which have been used beyond the memory of man, and accepted and approved by Prince and people, and are those which are called the common laws of *England*. The second sort are particular and local customs, used in some particular Manors, Territories, Cities, and Baronies, and Towns, grounded upon some reasonable causes, and used in times beyond the memory of Man; and of these Mr. *Littleton* saith that,

Consuetudo ex certâ et
rationabili causâ usitata pri-
vat communem legem.

Custom, grounded upon
certain and reasonable causes,
takes away the common
law.

The third sort are Statute Laws, made in Parliament by the King, the Lords spiritual and temporal, and the Commons, which are the representative body of the Commonwealth: And of this sort, some are general laws, extending to all parts of the kingdom, and some are particular, extending only to particular places or persons. And of the general laws some are introductory and positive, and some are declaratory, declaring the common law in some doubtful and ambiguous point, and some are mutatory, to alter and repeal some former laws in part or in the whole. But the Common Laws
are

are general customs, and the particular customs were only of force in *England* in the time of King *John*; for all the statute laws now of force in *England* have been made since that time, viz. in the reign of *Hen. 3.* and in the reigns of other succeeding Kings. So as the laws established by King *John* in *Ireland*, in the twelfth year of his reign, were only these general customs, which are now called the Common Laws. And the particular and local customs, which are limited to persons or places, which could not be transferred or applied by any general words to the Kingdom of *Ireland*, where the persons or places, whereunto these particular customs were limited and confined, are not to be found, and concerning the Statute Laws, which have been made since the time of King *John*, so many of them as concern particular persons, and particular places in *England*, cannot by any general conformation or approbation become to be laws of Force in *Ireland*; where no such places or persons are to be found; but all such statutes as have been made since the time that King *John* established the laws of *England* in the Kingdom of *Ireland*, which are only declaratory of the Common Laws, are of force in *Ireland*, without any other confirmation or approbation, but only the first establishment. And of this Sort are the statutes of *Magna Charta*, made in the 9th year of *Hen. 3.* the statute made in 14th. of *Hen. 3.* called *Statutum Hiberniæ*, and the statute of 25th. of *Edw. 3.* called the *Statute de Proditionibus*, and many other statutes of the like kind. But such statutes as have been made in *England* since the 11th of King *John*, and are introductory and positive, making new laws, or any ways altering, adding unto, or diminishing the ancient Common Laws, have not been binding, or any ways of force in *Ireland*, until such time as they have been enacted, allowed,

allowed, and approved of, by act of Parliament in *Ireland*; as may appear by the judgments of nine Parliaments holden there, (*viz.*) in 13th. of *Edw. 2.* in a Parliament in *Ireland*, the Statutes of *Merton* and *Marlebridge*, made in the time of *Hen. 3.* and the statutes of *Westminster 1st*, and of *Westminster 2d*, and the Statute of *Gloucester*, made in the time of *Edw. 1.* were confirmed and approved to be of force in *Ireland*, and all other statutes, which were of force in *England*, were then referred to be examined in the next Parliament, and so many of them, as should be then allowed, and published, to be accepted for laws in *Ireland*. And afterwards, in a Parliament holden in *Ireland* in 19th. of *Edw. 2.* it was enacted, that the statutes made in *England* should not be of force in the Kingdom of *Ireland*, unless they were allowed and published in that kingdom by Parliament; and the like statute was made again in 29th. of *Hen. 6.* But these statutes are not to be found in these parliament rolls, nor any parliament rolls at that time, but the same are exemplified under the great Seal, and the exemplifications were remaining in the Treasury of the city of *Waterford*: And it is most certain, that not only these parliament rolls, but also many other rolls and records miscarried in those troublesome and distempered times which have been in *Ireland*: For, in all the times of *Edw. 3. Rich. 2. Hen. 4. and Hen. 5.* which is almost an hundred years, there is not any parliament roll to be found; and yet it is most certain, that divers Parliaments were holden in those times. Moreover in 28th. of *Edw. 1. 5th. of Edw. 3. 14th. of Edw. 3. 25th. of Edw. 3. 34th. of Edw. 3. and 7th. of Rich. 2.* divers good laws were made in *England* by several Acts of Parliament against the extortions and oppressions of Purveyors; which laws were never received, nor put in execution in *Ireland*, until

til the 18th of *Hen. 6. Chap. 1.* that it was enacted, agreed, and established by Parliament in *Ireland*, that all statutes made against Purveyors within the realm of *England* should be holden and kept in all points, and put in execution in *Ireland*.

It also appeareth in the year book of 20th *Hen. 6. fol. 8.* that one *John Pilkington* brought a Scire facias against one *A.* to shew cause why Letters Patents, whereby the King had granted an Office in *Ireland* to the said *A.* should not be repealed, whereas the said *John Pilkington* had the same Office granted him by former Letters Patents granted by the same King, to occupy by himself or his deputy. Whereupon the said *A.* was warned and appeared, and said, ' That the land of *Ireland*, time beyond
' the memory of man, hath been a land separat-
' ed, and severed from the realm of *England*,
' and ruled and governed by the customs and
' laws of the same land of *Ireland*. And that
' the Lords of the same land, which are of the
' King's Council, have used from time to time in
' the absence of the King to elect a Justice, which
' Justice so elected hath power to pardon and pu-
' nish all Felonies, Trespasses, &c. and to assem-
' ble a Parliament; and by the advice of the Lords
' and Commonalty to make statutes; and he al-
' ledgeth further, that a Parliament was assembled,
' and that it was ordained by the said Parliament,
' that every Man who had any Office within the
' said land, before a certain day, and he puts the
' day in certain, shall occupy the said Office by him-
' self, or otherwise that he shall forfeit his Office.
' And sheweth further, how the said *John Pilkington*
' occupied the said office by a deputy, and
' that, inasmuch as he came not in proper person
' to reside upon his Office before the day, that his
' Office was void, and that the King by his Letters
C Patents

‘ Patents granted the said Office so become void
 ‘ to the said *A.* and prayed, that the said Letters
 ‘ Patents should be effectual, and not repealed.’
 And upon the plea the said *John Pilkington* demurred
 in Law. In the argument of which case, it
 was debated by the Judges, *Yelverton*, *Fortescue*,
Portington, *Markham*, and *Ascough*, whether the
 said prescription were good, or void in law; *Yel-*
verton and *Portington* held the prescription void;
 but *Fortescue*, *Markham*, and *Ascough*, held the pre-
 scription good, and that the Letters Patents made
 to *A.* were good and effectual, and ought not to
 be repealed: and in the argument of this case, it
 was agreed by *Fortescue* and *Portington*, that if a
 tenth or fifteenth be granted by Parliament in *En-*
gland, that shall not bind them in *Ireland*; although
 the King send the same statute into *Ireland* under
 his great Seal: except they in *Ireland* will in their
 Parliament approve it; but if they will approve it,
 then it shall bind in *Ireland*. And *Portington* said,
 that if a tenth be granted in the Parliament of *En-*
gland, that shall not bind in *Ireland*, because they
 have not any commandment by writ to come to
 our Parliament; and this was not denied by *Mark-*
ham, *Yelverton*, or *Ascough*. Upon this case these
 points following are to be observed, First, that the
 Lords of the Council of *Ireland* had then power,
 in the absence of the King, and vacancy of a
 Lieutenant or Deputy, to elect a Justice, and that
 is plainly proved by the preamble of the statutes
 of 33d. of *Hen. 8. Chap. 2.* in *Ireland*. The
 words are these; ‘ For as much as continually sithens
 ‘ the conquest of this realm of *Ireland*, it hath been
 ‘ used in this same realm of *Ireland*, that at every
 ‘ such time, as it hath chaunced the same realm to
 ‘ be destitute of a Lieutenant, Deputy, Justice,
 ‘ or other head Governour, by death, surrender, or
 ‘ departure out of the said realm, or otherwise,
 ‘ the council of this realm of *Ireland*, for the time
 ‘ being,

' being, have used by the laws and usages of the
 ' same, to assemble themselves together to choose
 ' and elect a Justice, to be Ruler and Governour
 ' of this realm, till the King's Highness had de-
 ' puted and ordained a Lieutenant, Deputy, or
 ' other Governour for the same realm; which Jus-
 ' tice, so being elected, was and hath been always
 ' by the ancient laws and customs of this said
 ' realm of *Ireland* authorised to do and exercise the
 ' said rounge of Deputy there, for the good rule
 ' and governance, and leading of the King's sub-
 ' jects within the said realm of *Ireland*, and in
 ' ministration of Justice, with divers other autho-
 ' rities, preheminences, and jurisdictions there;
 ' which usage, election, and authority of the said
 ' Justice hath been many times ratified and con-
 ' firmed by divers statutes in this Realm provid-
 ' ed and made. But this order of election of a
 ' Justice is now by the said statute of 33d. of
 ' *Hen. 8.* altered; as by the said statute more at
 ' large may appear.'

The second point to be observed upon this said
 Case is, that the Lord Justice, for the time being,
 had power to summon a Parliament, and therein to
 enact laws, and statutes, without any commission
 from the King.

The third point to be observed upon the said Case
 is, that the statutes made in *England* do not bind in
Ireland, unless the same be approved and allowed of
 in the Parliament of *Ireland*. But afterwards in the
 time of *Edw. 4.* a doubt was conceived, whether
 the statute made in *England*, in 6 *Rich. 2. Chap. 6.*
 concerning Rape, ought to be of force in *Ireland*,
 without a confirmation thereof by Parliament: for
 the clearing of which ambiguity and doubt in 8
Edw. 4. Chap. 1. in *Ireland*, it was enacted by au-
 thority of Parliament, that the said statute of 6 *Rich.*
 2. be adjudged and approved in force and strength;
 and that the statute may be of force in this land of

Ireland from the 6th day of *March* then last past, and from thenceforth the said act, and all other statutes and acts made by the authority of Parliament within the realm of *England*, be ratified and confirmed, and adjudged by the authority of the said Parliament, in their force and strength from the said 6th day of *March*. The cause of which doubt and ambiguity is not expressed in the said statute; but it may be collected, that the said statute was by some men conceived to be but a declaration and explanation of the true meaning of the statute of *Westminster 2. Chap. 34.* concerning Rape, which was formerly confirmed and approved by Act of Parliament in 13 *Edw. 2.* The words of the statute are these as followeth, *viz.* If any man from henceforth ravish any woman, married lady, damsel, or other, with force, where she did not consent, neither before nor after, he shall have judgment of life and member. And likewise, where a man ravished a woman, married lady, damsel, or other with force, although she consent afterwards, he shall have judgment as aforesaid, if he be not attainted, and if no man will sue, the King shall have the suit; and for women carried away with the goods of their husbands the King shall have the suit for the goods taken away: and in case the wife wilfully forsake her husband, and go away, and continue with the adulterer, she shall be barred for ever of action to demand her dower, that she ought to have of her husband's estate, if she be convicted thereupon. But the truth is, that the said statute of *Rich. 2.* is not only a declaration of the said statute of *Westminster 2. Chap. 34.* but an addition, that is, the wife shall by the statute of *Westminster 2.* lose her dower by consenting to the ravisher, and living with him in adultery; so the single woman by the statute of 6 *Rich. 2.* shall forfeit her inheritance, if she consent to the ravisher; so as until the said statute of 8 *Edw. 4.* the said statute of 6 *Rich.*

Rich. 2. was not wholly of force in *Ireland*; and that may appear by the words of the said statute of *8 Edw. 4.* For by the words thereof the said statute of *6 Rich. 2.* was to be of force from the 6th of *March* then last past, whereas, if the said statute of *6 Rich. 2.* had been but a declaration or explanation of the statute of *Westminster 2. Chap. 34.* it would have been of force at all times since the making of the statute of *Westminster 2d.* which was in *13 Edw. 1.* And although the statute of *8 Edw. 4.* be general, that all other statutes and acts made by the authority of Parliament within the realm of *England* should be of force in *Ireland*, there be many statutes made in *England*, which concern particular Cities, and particular Persons, which are not of force in *Ireland* by the general words of that statute of *8 Edw. 4.* For it were absurd to make such construction, that a statute made in *England* concerning the City of *London* should be in force in *Ireland* by any general words for it; so it must either be of force throughout the whole kingdom, or not at all; for it cannot be applied to any one particular city in *Ireland*, more than to another. But the true construction of the said statute is, to make all such statutes of force in *Ireland*, as are general laws throughout the kingdom of *England*, and not such as are limited or restrained to particular places, or particular uses and purposes, which may not aptly or fitly be applied to *Ireland*.

Likewise in the year book of *2 Rich. 3.* fol. 11. divers merchants of the City of *Waterford*, in *Ireland*, shipped divers merchandizes of the Staple, intending to carry them to *Shuce* in *Flanders*, and not to *Calais*, contrary to a statute made in *England* in *2. Hen. 6. Chap. 4.* whereby it is enacted, that the whole repair of wools, wool-fells, leather, whole tin, and shotten tin, and all other merchandizes belonging to the Staple, passing out of the realm of *England*, and the countries of *Wales* and *Ireland*, to be at *Calais*

lais in *France*, upon pain of forfeiture of the very value of the merchandize, which shall be carried elsewhere, and that no licence from thenceforth be granted to the contrary, except for wool-fells and leather of *Northumberland*, and the Bishoprick of *Durham*; and he that espieth the same, and thereof giveth knowledge to the Treasurer of *England*, shall have a fourth part of the forfeiture so by him espi- ed: and the said ship, against the will of the said merchants arrived at *Calais*, and there Sir *Thomas Thwaites* Knight seized upon the said ship, and after the said merchants petitioned to the King and his council at *Westminster* by Bill to have restitution; and the said *Thwaites* alledged the said statute, and further shewed, that the said merchants made an indenture with the master of the ship to transport the said merchandize into *Flanders*, and not to *Calais*; and the merchants shewed a licence of *Edw. 3.* and a confirmation of *Edw. 4.* and another confirmation of *Rich. 3.* made to the commonalty and merchants of the said City, by the name of their Corporation, and to their heirs and successors, to carry and transport out of the land of *Ireland*, merchandizes of the Staple whither soever they pleased: and upon that matter two questions were moved. First, if towns corporated in *Ireland*, and other inhabitants in *Ireland*, shall be bound by statutes made in *England*. And the second question was, if the King may give licence contrary to the statute, especially where it is ordained by the statute, that the finder shall have part of the forfeiture, and the King shall have the residue. And for the solution of these questions, all the Justices were assembled in the Exchequer Chamber. And as to the first question, it was said, that the land of *Ireland* in itself had a Parliament, and all other Courts as in *England*, and by the same Parliament doth make laws and change laws, and are not bound by the statutes of *England*, because they have not therein Knights of Parliament.

Parliament. But this is understood of lands and things in that land only to be affected; but the persons are the King's subjects, and as subjects are bound to any thing to be done out of *Ireland* against the statute, as the inhabitants of *Calais*, *Gascoigne*, *Guifnes*, were while they were subjects, and likewise shall be obedient to the Admiral of *England* of things done upon the sea; and likewise a Writ of Error of a judgment given in *Ireland* doth lie in the King's Bench in *England*. And for the second question, the King may give a licence, with a clause of *non obstante*. But in 1 *Hen. 7.* all the Justices being in the Exchequer Chamber, the said question was moved again between them of the city of *Waterford*, and Sir *Thomas Thwaites*, Treasurer of *Calais*, and then *Hussey*, Chief Justice, said, that the statutes made in *England* did bind them of *Ireland*. But afterwards 10 *Hen. 7. Chap. 22.* it was enacted in a parliament in *Ireland*, that all statutes then lately made within the said realm of *England*, concerning or belonging to the common or publick weale of the same, from thenceforth should be deemed good and effectual in the law, and over that accepted, used, and executed within the land of *Ireland* at all times requisite, according to the tenor and effect of the same; and over that by the authority aforesaid, that they, and every of them, be authorized, proved, and confirmed in the said land of *Ireland*.

By all which statutes made from time to time in *Ireland* it plainly appeareth, that all statutes made in *England* before 10 *Hen. 7.* concerning or belonging to the public and Commonwealth of *England*, are made to be of force, and to become laws in *Ireland*. And likewise at the same Parliament, *Chap. 4.* it was ordained, enacted, and established, that no Parliament should after that time be holden in *Ireland*, but at such season, as the King's Lieutenant and Council there do first certify the King under

under the great Seal of that land the causes and considerations, and all such acts, as to them seemed should pass in the said Parliament, and such causes, considerations, and acts, affirmed by the King and his Council, to be good and expedient for that land, and his licence thereupon, as well in affirmation of the said causes and acts, as to summon the said Parliament under his great Seal of *England* had and obtained; that done a Parliament to be had and holden after the form and effect before rehearsed; and if any Parliament be holden in that land hereafter, contrary to the form and provision aforesaid, it be deemed void and of no effect in law.

And forasmuch, as since the making of the act of 10 *Hen. 7. Chap. 4.* commonly called *Poining's* act, divers and sundry ambiguities, and doubts have been made upon the true meaning and understanding of the same; for the avoiding of which doubts and ambiguities, and for a full and plain declaration of the true meaning and understanding of the said act, in 3 and 4 *Philip and Mar. Chap. 4.* it was ordained, enacted, and established by authority of Parliament, that the said act, and every clause and article therein contained, should from the first day of *September* then last past, be expounded, and understood, and taken, as hereafter followeth (that is to say) that no Parliament be summoned or holden within the realm of *Ireland*, until such time as the Lieutenant, Lord Deputy, Lord Justice, Lords Justices, Chief Governor, or Governors or any of them, and the Counsaile of the said realm of *Ireland* for the time being, shall certify the King and Queen's Majesty, or her heirs and successors under the great Seal of the realm of *Ireland*, the considerations, causes, and articles of such acts, provisions and ordinances, as by them shall be thought meet and necessary to be enacted here by Parliament; and shall have also received
again

again their Majesties answers under the great Seal of *England*, declaring their pleasure either for passing of the said acts, provisions, and ordinances, in such form and tenor as they should be sent into *England*, or else for the chaunge or alterations of them, or any part of the same; and it was further enacted by the authority aforesaid, that after such return made, and after licence and authority to summon a Parliament within the said realm of *Ireland*, granted under the great Seal of *England* unto the Lieutenant, or the Lord Deputy, or other Lord Justice, or Lords Justices, Governor, or Governors, shall and may summon and hold a Parliament within the realm of *Ireland*, for passing and agreeing upon such acts, and no others, as shall be returned under the said great Seal of *England*: and forasmuch as many events and occasions may happen during the time of the Parliament, which shall be thought meet and necessary to be provided for, and yet at or before the time of summoning of the Parliament were not thought nor agreed upon; therefore, it was then further enacted and established by the authority of the said Parliament, that as well after every such authority, and licence sent unto the said realm of *Ireland*, as also at all times after the summons, and during the time of every Parliament to be hereafter holden within the realm of *Ireland*, according to the tenor and form of the said act, the Lieutenant, Lord Deputy, Lords Justices, Chief Governor or Governors, and Council of the said realm, for the time being, shall and may certify all such other causes, considerations, tenors, provisions, and ordinances, as they shall further then think good to be enacted and established at and in the said Parliament within the same realm, to the King and Queen's Majesty, her heirs and successors, under the great Seal of the said realm of *Ireland*,

and such causes, considerations, tenors, provisions, and ordinances, or any of them, shall be thereupon certified and returned into the said realm, under the great Seal of *England*, and no others, shall or may pass, and be enacted in every such Parliament within the said realm of *Ireland*, in case the same considerations, causes, tenors, provisions, and ordinances, or any of them, shall be agreed and resolved upon by the three estates of the said Parliament; any thing contained in the said act, or in the aforesaid act made at *Drogheda*, commonly called *Poining's act*, to the contrary notwithstanding.

By these two last mentioned statutes, the manner of summoning a Parliament in *Ireland*, and the proceedings and passing of acts in the same, are much altered from that which was before 10 *Hen. 7.* For now, by these two statutes it is so provided, that no act can be so much as read in Parliament without the King's allowance by the advice of both his councils of *England* and *Ireland*; and these acts have been held so sacred in *Ireland*, that in 11 *Eliz. Chap. 8.* it is enacted, that no Bill shall be certified into *England* for the repeal or suspending of the said statute of 10 *Hen. 7.* called *Poining's act*, before the said Bill be first agreed upon in a session of Parliament holden within the realm of *Ireland* by the more number of the Lords assembled in Parliament, and the greater number of the Commons House. And if there be any act passed, or to be passed thereupon, touching the repeal or suspending of the said statutes made in 10 *Hen. 7.* called *Poining's act*, the same to be utterly void and of no effect to all purposes and intents.

By this, which hath been already shewed, it is apparent, that none of the statutes made in *England* from the 12th year of King *John*, until 10 *Hen. 7.* (which were introductory or positive) have been received or put in execution, as laws, in the realm of

of *Ireland*, until the same were approved and enacted by several acts of Parliament in *Ireland*.

Now it followeth to take into consideration what acts of Parliament made in *England* since 10th of *Hen.* 7. are now in force in *Ireland*, and how the same came to be of force there. It is true, that since 10 *Hen.* 7. there have been many acts of Parliament made in *England* of great importance both for the government of the Commonwealth, and the administration of justice between party and party, which are now of force in *Ireland*: but none of them were ever received as laws in *Ireland*, until the same were enacted by several parliaments holden in *Ireland*, as, amongst many others, may appear by the particulars following. In 21 *Hen.* 8. Chap. 7. an act was made in *England*, that makes it felony in a servant that runneth away with the goods of his master or mistress; and this act was not received in *Ireland* until the same was enacted by a parliament holden in *Ireland* in 33 *Hen.* 8. Sess. 1. Chap. 5. In 21 *Hen.* 8. Chap. 19. there was a law made in *England*, that all Lords might distrain upon the lands of them holden for their rents and services, and to make their avowries, not naming the tenant, but upon the lands: but this law was not received in *Ireland* until it was enacted there in 33 *Hen.* 8. Sess. 1. Chap. 7. An act was made in *England* in Anno 31 *Hen.* 8. Chap. 1. that joint tenants, and tenants in common, should be compelled to make partition; which act was not received in *Ireland* until it was enacted there in 33 *Hen.* 8. Sess. 1. Chap. 10. In 27 *Hen.* 8. Chap. 10. the statute of uses was made in *England*, for transferring of uses into possession; which statute was never received, nor of force in *Ireland*, till the same was enacted in *Ireland*, 10 *Car.* 1. Chap. 1. So likewise, 32 *Hen.* 8. Chap. 1. a statute was enacted in *England*, whereby it is directed how lands and tenements may be disposed by will,

and concerning wardships, and primer feizins: which statute was never received, nor of force in *Ireland*, until it was enacted by Parliament in *Ireland* in 10 *Car. I.* Chap. 2. In *Anno 1 Eliz.* Chap. 5. there was an act made in *England* for the uniformity of the common Prayer and administration of the Sacraments; which act was not received in *Ireland*, until the same was confirmed and established by Parliament in *Anno 2 Eliz.* Chap. 2. In *Anno 5 Eliz.* Chap. 9. there was an act of Parliament in *England* for the punishment of wilful perjury; which act was not of force in *Ireland* until the same was enacted by a Parliament in *Ireland* in 28 *Eliz.* Chap. 1. Another act was made in *England* in *Anno 3 Eliz.* Chap. 12. for the punishment of witchcraft and sorcery, and another act in the same year, Chap. 14. for the punishment of forgery; which acts were not of force in *Ireland* until the same were enacted by Parliament there in 28 *Eliz.* Chap. 2. 3. In 28 *Hen. 8.* Chap. 15. there was an act made in *England* for the punishment of Piracy; which act was not of force in *Ireland* until the same was enacted in *Ireland* in 12th of *James*, Chap. 2. In 27th of *Eliz.* Chap. 4. an act was made in *England* against fraudulent conveyances, which act was not of force, nor received in *Ireland*, until the same was enacted in *Ireland* 10 *Car. I.* Chap. 3. besides many other acts made in the several reigns of *Hen. 8.* *Edward 6.* *Queen Elizabeth*, *King James*, and the King's Majesty who now is. And it is not to be found in any record in *Ireland*, that ever any Act of Parliament made in *England* since the time of *King John*, was by the judgment of any Court received for law, or put in execution in the realm of *Ireland*, before such time as the same was confirmed and established by act of Parliament in *Ireland*.

But it may be objected, that although such acts of Parliament as have been enacted in *England*, where

in no mention hath been made of *Ireland*, do not bind, and are not of force in *Ireland*; yet all such acts, as have been, or shall be made in *England*, wherein *Ireland* is particularly named, are, and shall be of force there, without any confirmation or approbation by Act of Parliament in *Ireland*; as for example. The Statute of 14th *Hen. 3.* intituled *Statutum Hiberniæ*—The Statute for *Ireland*, concerning Co-heirs, the Ordinance made 17th *Edw. 1.* intituled *Ordinatio pro Statu Hiberniæ*.—An Ordinance for the State of *Ireland*, and the opinion of *Hussy*, chief Justice in 1 *Hen. 7. fol. 3.* which is, that statutes made in *England* shall bind them of *Ireland*, and likewise an opinion in *Calvin's* case, that albeit *Ireland* be a distinct dominion from *England*, yet the title thereof being by conquest, the same by judgment of law, might by express words be bound by the Parliament of *England*; and albeit there be no reservation, wherein King *John's* Charter of establishing the laws of *England* in *Ireland*, yet by judgment of law a writ of error did lye in the King's Bench in *England* of an erroneous judgment in the King's Bench in *Ireland*.

To these objections it may be answered; first, for the statute of 14th of *Hen. 3.* intituled *Statutum Hiberniæ*,—the Statute for *Ireland*, the same was not an introductory law, but an explanation of the ancient Common Law, as may appear by the very words thereof. The words are these,

“ Cum Milites de partibus
 “ *Hiberniæ*, nuper ad nos
 “ accedentes, nobis osten-
 “ derunt, quod cum hæ-
 “ reditas devolutasset, vi-
 “ delicet, inter sorores in
 “ terrâ nostrâ *Hiberniæ*,
 “ justiciarii de iisdem par-
 “ tibus Itinerantes incerti
 “ sunt, utrum post natâ
 “ sorores

Whereas certain Knights
 from *Ireland*, lately ap-
 proaching our presence,
 have represented unto us,
 that when an inheritance
 has devolved upon sisters in
Ireland, the Justices Itine-
 rant of those parts are un-
 certain, whether the young-
 er sisters ought to hold of
 the

" sorores tenere debeant de the elder sisters, and do ho-
 " primo genitâ sorore, et mage to her or not. And
 " ei facere homagium, aut because the said Knights
 " non; et quia predicti have desired to know, how
 " milites petierunt quali the usage of *England* hath
 " ter in Regno nostro *An-* hitherto been in the like
 " glia in casu consimili case, we thus at their in-
 " hætenus usitatum fuit, stance signify unto you,
 " sic ad instantiam ean- that in our kingdom of *En-*
 " dem vobis significavi- *gland*, the law and custom is
 " mus, quod in Regno nos- such in that case, that if
 " tro *Anglia* talis est lex et any person should hold of
 " consuetudo in hoc casu, us *in capite*, and should
 " quod si quis tenuerit de have daughters for his heirs,
 " nobis in capite, et ha- their father being dead, our
 " buerit filias hæredes, ip- Ancestors have had, and
 " so parte defuncto, An- we also have received and
 " tecessores nostri habue- taken homage of all such
 " rant, Nos semper habu- daughters, and each of
 " imus, et sepimus, ho- them in such case doth hold
 " magium de omnibus hu- of us *in capite*; and if they
 " iusmodi filiabus, et sin- be under age, we shall have
 " gular earundem tenuer- the ward and marriage of
 " unt de nobis in capite them and each of them.
 " in hoc casu; et si infra But if they should hold of
 " ætatem fuerint, nos ha- any other Lord, and the
 " bebimus custodiam ea- sisters should be within age,
 " rundem et maritagium their Lord shall have the
 " singularum; Si autem ward and marriage of them
 " de alio Domino tenue- and each of them, and the
 " rint, et ipse sorores infra eldest shall do her homage
 " ætatem fuerint, earum to the Lord for herself, and
 " Dominus habeat custo- all her sisters, and the other
 " diam et maritagium ea- sisters, when they arrive at
 " rundem ac singularum, full age, shall do their ser-
 " & primo genita suum vices to the Lord of the
 " faciet homagium Domi- fee by the hands of the el-
 " no pro se et omnibus fo- dest; nor can the eldest sis-
 " roribus suis; et aliæ so- ters by any reason or occa-
 " rores, cum ad ætatem sion exact or receive hom-
 " venerint, facient servitia age, or wardship, or any
 " Domino feodi per ma- other subjection, from the
 " num primo genitæ, nec younger sisters; because
 " possent primo genitæ, to whomever all are, as it
 " ratione were

“ratione vel occasione a
 “post natis sororibus ho-
 “magium vel custodiam,
 “vel aliquam aliam sub-
 “jectionem, exigere vel
 “habere; quia, cui om-
 “nes sunt quasi unus hæ-
 “res de unâ hæreditate,
 “si primo genita posset ha-
 “bere homagium aliarum
 “sororum, vel custodiam
 “petere, tunc esset illa hæ-
 “reditas divisa, ita quod
 “primo genita soror esset
 “simul et semel de una
 “hæreditate Domina et
 “hæres, hæres autem suæ
 “partis, et Domina soror-
 “um suarum, quod qui-
 “dem in isto casu fieri non
 “poterit, cum ipsa pri-
 “mo genita nihil posset
 “petere plus quam aliæ
 “sorores, nisi capitale mes-
 “suagium ratione. Pre-
 “terea si primo genita hu-
 “jusmodi homagium a
 “post natis sororibus suis
 “acceperet, esset quasi do-
 “mina earum, et habere
 “posset custodiam earum,
 “et filiorum suorum, et
 “hoc esset quasi commit-
 “tere agnum lupo ad de-
 “vorandum. Et ideo vo-
 “bis mandamus, quod
 “prædictas consuetudines,
 “quas in Regno nostro
 “*Angliæ* habemus in hoc
 “casu, ut predictum est,
 “in terrâ nostrâ *Hiberniæ*
 “proclamari faciatis & ob-
 “servari.”

were, one heir of one in-
 heritance, if the eldest
 may receive the homage of
 the other sisters, or de-
 mand the wardship, then
 that inheritance would be
 divided, so that the elder
 sister would be lady and
 heiress of one and the same
 inheritance, that is, heir-
 ess of her own purparty,
 and lady of her sisters,
 which cannot be in this
 case, when the eldest sister
 can demand nothing more
 than the other sisters, ex-
 cept the capital messuage.
 Besides, if the eldest sister
 should receive such hom-
 age from her younger sis-
 ters, she would be as it
 were, lady of them, and
 might have the wardship of
 them and their children,
 and that would be, as it
 were, to commit the Lamb
 to the Wolf to be devour-
 ed. And therefore we
 command you, that you,
 cause to be proclaimed and
 observed in our land of *Ire-
 land* the said customs, which
 in such case, as aforesaid,
 are in use in *England*.

So likewise the statute of *Magna Charta*; which was only a declaration of the Common Law, was of force in *Ireland*, before any statute made in *Ireland* for confirmation of the same; and that may well appear by the statute of 13th of *Edw. 2.* before remembered, whereby the statutes of *Morton* and *Marlebridge 1st. Westm. 2.* and the statute of *Gloucester* were confirmed in *Ireland*, wherein *Magna Charta* is not mentioned; which doubtless would have been, if the same had been needful; but being a declaration of the Common Law, it was not thought needful to be confirmed, as the other statutes therein mentioned; which were in the most part of them introductive and positive; and concerning the Ordinance, intituled *Ordinatio pro Statu Hibernie*, the same was never received in *Ireland*; for that Ordinance, amongst other things doth ordain, that the Justice of *Ireland*, nor no other Minister of the King in that land, as long as they are in their offices, should purchase any lands or tenements within the said land, within the limits of their jurisdiction, without the King's special Licence; and if any do to the contrary, that that which he shall purchase, shall be forfeited to the King and his heirs; and it is manifest, that many Justices of *Ireland*, and other officers, have in all ages since the making of the said Ordinance, acquired and purchased, without the King's Licence, great possessions in all parts of *Ireland*; and yet it doth not appear by any office, inquisitions, or other records, that ever the King hath been intitled to any such lands, which doubtless would have been, if the said Ordinance had been of any force within the Kingdom of *Ireland*. Secondly, the said Ordinance is no Act of Parliament, but only an Ordinance made by the King, by the assent of his Council; and therefore could not have the force of law. For if a King come to a Christian kingdom by conquest, seeing he hath *potestatem vitæ et necis*, he may at his pleasure alter and change the laws

laws of that kingdom; but until he doth make an alteration of those laws, the antient laws of the kingdom remain; but if a Christian King should conquer the kingdom of an Infidel, and bring them under subjection, there *ipso facto* the laws of the Infidel are abrogated; for that they be not only against Christianity, but against the law of God and Nature, contained in the decalogue; and in that case, until certain laws be established amongst them, the King by himself, and such Judges as he shall appoint, shall judge them, and their causes, according to natural equity, in such sort as Kings in antient times did within their kingdoms, before any certain laws were given. But if a King have a kingdom by title of descent, there, seeing that by the laws of that kingdom he doth inherit the kingdom, he cannot change those laws of himself, without consent of Parliament. Also, if a King have a Christian kingdom by conquest, as King *Hen. 2.* had *Ireland*, after King *John* had given unto them, being under his obedience, the laws of *England* for the government of that kingdom, which are not only regal, but also politick; no succeeding King could alter the same without a Parliament of that kingdom, as it appears in *Calvin's* case, *Cooke L. 7. fol. 17.* And as to the opinion of *Hussy*, chief Justice, in 1st. of *Hen. 7. fol. 3.* that the statutes made in *England* shall bind them of *Ireland*, this opinion, as it is put by him generally, cannot be law; for *Brooke*, in abridging that case in title Parliament, *Seet. 19.* saith, that that opinion was denied to be law, the last term before; and added further, *tamen nota*, that *Ireland* is a realm of itself, and hath a Parliament in itself, implying thereby, that *Ireland* could not be bound but by a Parliament of *Ireland*. And according to that is the opinion of the Judges in 20th *Hen. 6. fol. 8.* in *John Pilkington's* case, and in 2d *Rich. 3. fol. 11.* in the Merchants of *Waterford's* case, before remembered; and likewise contrary to

the opinion of *Hussy* are the Judgments of eight several Parliaments in *Ireland* before the Statute of 10th of *Hen. 7.* viz. 13th of *Edw. 2.* 19th of *Edw. 2.* 18th of *Hen. 6.* 29th of *Hen. 6.* 32d of *Hen. 6.* 37th of *Hen. 6.* and 8th of *Edw. 4.* And since the Statute 10th of *Hen. 7.* of five Parliaments, viz. 28th of *Hen. 8.* 33d of *Hen. 8.* 28th of *Eliz.* 11th of *Jam.* and 10 *Car.* besides the statute of 10th *Hen. 7.* itself : and it doth not appear by any record to be found in *Ireland*, or in any of the year books in *England*, since the time of King *John*, which is above four hundred years, that any judgment was ever given or grounded upon any statute made in *England*, which is a mere positive law, and not a declaration of the Common Law, before the same was received, and allowed by act of Parliament in *Ireland*; and, although the words of *Hussy* be general, without restriction, yet I conceive his meaning was not so; but that by the words (the Statutes of *England*) he intended such statutes as concerned the matters then in question, which were the statutes concerning the Staple of *Calais*, in which statute *Ireland* is particularly named : and yet by the opinion of the Judges in 2d *Rich. 3.* that statute was not of force in *Ireland*; and as to the opinion in *Calvin's case*, *Cooke*, lib. 7. fol. 17. viz. that albeit *Ireland* were a distinct Dominion, yet the title thereof being by conquest, the same by judgment of law might by express words be bound by the Parliament of *England*; for proof of which opinion it is added, that albeit no reservation were in King *John's* Charter; yet, by Judgment of law, a writ of error lyeth in the King's-Bench in *England* of an erroneous judgment in the King's-Bench in *Ireland*. For clearing of this point, and answering of this objection, besides the said book cases in 20 *Hen. 6.* and 2 *Edw. 3.* we shall find divers judgments of Parliament in *Ireland* to the contrary since the statute 10 *Hen. 7.* viz. in 24 *Hen. 8.* Chap. 12. &c.

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An act was made in *England* concerning appeals to *Rome*, which Act doth by exprefs words extend to all his Majesty's Dominions; yet the same was not received, nor of force in *Ireland*, until it was enacted by Act of Parliament there in 28 *Hen. 8.* Chap. 6. Also the statute of 28 *Hen. 8.* Chap. 8. made in *England* concerning the first fruits of the Clergy extended by exprefs words to any of the King's Dominions; yet the same was not received, or of force in *Ireland*, until it was enacted there by Parliament in 28 *Hen. 8.* Chap. 8. Likewise the act of faculties made in *England* 25 *Hen. 8.* Chap. 21. extended by exprefs words to all the King's Dominions; yet the same was not received, or of force in *Ireland*, until it was enacted by Parliament in *Ireland*, 28 *Hen. 8.* Chap. 19.

And now, in as much as the laws of *England* and *Ireland* do not admit of any inconveniencies; it is to be considered, what inconveniencies may follow, if the Kingdom of *Ireland* should be bound by any statute made in *England*, and not confirmed by act of Parliament in *Ireland*. First, the Parliament of *Ireland* should be nugatory and superfluous, if by naming *Ireland* in any statute made in *England*, *Ireland* should be bound; then all these Parliaments which have been holden in *Ireland* since 12 King *John*, for the space of about 400 years, should have been needless and superfluous, which is not to be imagined. Secondly, if the statutes made in *England*, by expressing *Ireland*, should be binding, then by the same reason, a statute made in *England* may repeal, alter, or change, all the laws and statutes, which hitherto have been made and approved, or hereafter shall be made or approved in *Ireland*, which were a thing marvelous inconvenient for that Kingdom: and Mr. *Littleton* saith, that the laws will rather suffer a particular mischief, than a general inconveniency; and it is most certain that *Argumentum ab inconvenienti est in*

lege fortissimum.—An argument drawn from any inconvenience is of the greatest force in law. Thirdly, if the Parliaments of *England* and *Ireland* be holden at one and the same time, as they now are, and the one Parliament shall make a law, and the other likewise should make another law direct contrary to the other in the same point, it may be demanded, which of these laws shall be obeyed in *Ireland*? Fourthly, if the statutes made in *Ireland* by those who best know the state and condition of the Kingdom of *Ireland*, and of the people there, shall not be repealed, or any ways altered, or changed, or when laws be imposed by the Parliament of *England*, which cannot possibly know the state and condition of *Ireland*, so well as those, which are inhabiting, and have been born and lived many years in that Kingdom, it would be very inconvenient for them; no man's estate could be made secure or permanent by the Laws of *Ireland*, and what dangerous consequence might follow thereupon by the discontent of that nation, I leave to the consideration of those that are in authority, and best know how to prevent such future inconvenience; and considering that the statutes of *Ireland* are made with such cautions, and in such form, as is prescribed by *Poining's* act in 10 *Hen.* 7 and in 3 and 4 *Philip* and *Mary*, viz. First, that all the acts must be considered of the chief Governor, Governors, and Council of *Ireland*, and presented under the great Seal of *Ireland* to the King's most excellent Majesty, and by his Majesty and Council of *England*, approved and altered, and so transmitted into *Ireland* under the great Seal of *England*, and then, and not before, to be propounded in the Parliament of *Ireland*, and there to pass the votes of both Houses, and thereupon the royal Assent to be given by the chief Governor, or Governors of *Ireland*, who must have a special Commission under the great Seal of *England*, to that purpose; I cannot
not

not conceive why the Laws and statutes made in *Ireland* should be controuled, or any ways altered, by any other Authority, than by the Parliament of that Kingdom;—*Nil tam conveniens naturali equitati unumquemque dissolvi eo ligamine, quo ligatus est.*—Nothing is so agreeable to natural equity, as that every one should be unbound by the same authority, by which he was bound. Fifthly, the Kingdoms of *England* and *Ireland* are as well political as regal, and the laws thereof grounded upon parity of reason, and legal policy; and surely it standeth not with the rule of reason and politic Government, that the Liberties, Laws, and Estates, of those of the Kingdom of *Ireland*, and of their posterities, should be bound by any Laws or Statutes made in *England*, whereunto they are not any ways made privy nor parties: for by the rules of reason and politic Government, to all Statute Laws, whereby the whole Commonwealth is to be governed, the members thereof are to give assent, and a law made by the King, and Peers, or by the Peers and Commons, or by the King and Commons, without the Peers; or by the Peers and Commons, without the King, is of no force, and so it appeareth in 10 *Hen.* 7. Chap. 23. in *Ireland*, when it was declared, that a Parliament there holden before Sir Robert Preston, Knt. Viscount of *Gormanstown*, then Lord Deputy, should be deemed void to all intents and purposes for divers causes therein expressed, whereof one was, because there was no general summons of that Parliament to all the Shires, but only to four; and by the year books in 11 *Hen.* 7. fol. 27. and 33 *Hen.* 6. fol. 17. it appeareth, that to make a law by act of Parliament there must be the assent of the King, and also of the Lords and Commons; and therefore in 28 *Hen.* 8. Chap. 26. when *Wales* was by act of Parliament united and incorporated to be a member and party of the realm of *England*, and to be inheritable to the laws
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of *England*, it was thought reasonable, and so enacted in the same Parliament, that every County should send one Knight to the Parliament, and every Borough, one Burgess, to have votes in Parliament, as Knights and Burgesses of other Counties and Boroughs had; and in 34 *Hen. 8. Chap. 13.* the like statute was made for the County Palatine of *Chester*, to send Knights and Burgesses to the Parliament, as the County Palatine of *Lancaster*, or any other County doth. Sixthly, it is inconsistent with the dignity, power, and jurisdiction of the high Court of Parliament, that the same should be subordinate to the Parliament of another kingdom; for the Court of Parliament is, *Curia altissima et suprema* — The highest and most supreme Court, and by the laws both of *England* and *Ireland* hath a double capacity of jurisdiction, the one ordinary of judicature, to judge according to the laws already in force; the other supreme and absolute, and legislative, either to repeal former laws, or to alter or change the law in some particular point, or to make new laws for the better government of the Commonwealth; and therefore, being *suprema et altissima Curia*, cannot be subordinate nor subject to the controlling of any other power or jurisdiction. For although all the people of *England*, *Scotland*, and *Ireland*, are subject to the King's Majesty, yet the same is, *respectu diversorum* — in divers respects. And each kingdom hath its own several Parliaments, and several and distinct Laws: and it doth not thereby follow, that the Parliament of one of those Kingdoms should be subordinate or subject to the control of another; for by that reason, the Parliament of *Scotland* should be subordinate to the Parliament of *England*, which hitherto never was; neither did the *French*, when the greatest part of *France* in the time of *Hen. 6.* was subject to the King of *England*, acknowledge to be subordinate to the Parliament of *England*. And lastly, although

though writs of error to reverse judgments given in the King's-Bench in *Ireland* may be prosecuted in the King's-Bench in *England*, it doth not therefore follow, that the Parliament of *England* may repeal, alter, or change any laws or statutes of *Ireland*, or give new laws unto that kingdom: for if a writ of error be brought in *England* to reverse a judgment given in the King's-Bench of *Ireland*, the Judges of *England* are not to alter or change the laws of *Ireland*, or to give judgment according to the laws in *England* in such case, but according to the laws in *Ireland*, where the first judgment was given. For by a writ of error they are to examine whether the judgment given in *Ireland* be erroneous, and contrary to the laws of *Ireland*, and not whether it be contrary to the laws of *England*. For example; by the laws of *Ireland* if the husband be attainted of felony, the wife by such attainder shall be barred to demand any dower of the freehold and inheritance of her husband; and this was the ancient Common Law of *England*; but by a statute made in *England* in the time of *Edw. 6.* in such a case of attainder, the wife is not to be barred to demand her dower. Put the case then, that a woman bringeth a writ of dower in the court of Common Pleas in *Ireland*, to be endowed of the freehold and inheritance of her husband, the tenant pleads in bar of her dower that during the coverture her husband was seized, and attainted of felony, and pleads the record of the attainder in certain, she demurs upon this plea, and judgment is given against the demandant, as by the law of *Ireland* it ought to be; the demandant prosecutes a writ of error in the King's-Bench of *Ireland* to reverse the said judgment, and thereupon judgment is affirmed; the demandant in the writ of dower, not herewith content, but conceiving, that by the said statute made in *England* in the time of *Edw. 6.* the wife in such case of attainder
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of felony is not debarred to demand her dower, prosecuteth a writ of error in the King's-Bench of *England*; in this case the judges of the King's Bench of *England* ought to judge according to the laws of *Ireland* where the first judgment was given, which is, that the wife ought to be barred of her dower, by the attainder of her husband, and not to judge according to the said statute of *Edw. 6.* So likewise before the statute of 10th *Car. 1st. Sess. 2. Chap. 7. in Ireland*, if a Disseisor had died seized of lands, and no continual claim had been made, the entry of the Disseeisee was tolled, and he was put to recover his right by a real action, and not by way of entry; and by a statute made in *England* in 32d of *Hen. 8. Chap. 33.* it was enacted, that no such Disseisin, and dying seized, should toll the entry of the Disseeisee, or his heirs, except such Disseisor had continued in the peaceable possession by the space of five years next after the Disseisin by him committed. Now put the case, that before the said statute of 10th *Car. 1. 7.* and after the said statute of 32d of *Hen. 8. Chap. 33.* a Disseisor had gained the possession of any lands by Disseisin, and within the space of five Years next after such Disseisin had died seized, no entry or continual claim being made by the Disseeisee or his heirs, and the Disseeisee had entered into the said land, and the heir of the Disseisor bring an action against him *quare clausum fregit*, and upon not guilty pleaded in the King's Bench of *Ireland* the Jury finds the special matter, and there upon not guilty pleaded, judgment is given for the Plaintiff, as it ought to be, as the law was then in *Ireland*, and thereupon the Defendant pursueth a writ of error in the King's Bench in *England*: in this case the Judges of *England* ought to affirm the judgment given in *Ireland* according to the laws of *Ireland*, and not to reverse the same according to the said statute of 32d of *Hen. 8. in England.* Another objection more probable than any

any of those formerly rehearsed may be made upon a branch of the statute of the 25th of *Hen. 8. Chap. 20.* made in *England*, concerning the consecrating and electing Archbishops and Bishops, the words of which branch are as followeth, *viz. —*“ Be it enacted, ordained, and established, that at every
 “ avoydance of any Archbishoprick, or Bishoprick
 “ within this realm, or in any other the King’s Dominions, the King our Sovereign Lord, his heirs and
 “ successors, may grant to the Prior and Convent,
 “ or Dean and Chapter of the Cathedral Churches,
 “ or Monastries, where the See of such Archbishopricks or Bishopricks shall happen to be void,
 “ a licence under the great Seal of *England*, as
 “ of old time hath been accustomed, to proceed to election of an Archbishop or Bishop
 “ of the See so being void, with a letter missive, containing the name of the person which
 “ they shall elect and chuse; by virtue of which licence and letter missive so directed, they shall with
 “ all speed and celerity in due form elect and chuse
 “ the said person named in the said letter missive, to the dignity and office of the Archbishoprick or
 “ Bishoprick, so being void, and none other; and if
 “ they do defer or delay their election above twelve
 “ days next after such licence and letter missive to them delivered, that then for every such default,
 “ the King’s highness, his heirs and successors, at their liberty and pleasure, shall nominate and present by their letters patent under the great Seal
 “ such person to the said office and dignity, so being
 “ void, as they shall think able and convenient for the same; and that every such nomination and
 “ presentment to be made by the King’s highness, his heirs and successors, if it be to the office and
 “ dignity of a Bishop, shall be made to the Archbishop and Metropolitan of the province, where
 “ the See of the same Bishop is void, and if it be
 “ void, then to be made to such Archbishop and

“Metropolitan within this realm, or in any of the
 “King’s Dominions, as shall please the King’s high-
 “ness, his heirs and successors; and if any such no-
 “mination or presentment shall happen to be made
 “for default of such election to the dignity or office
 “of any Archbishoprick; then the King’s highness
 “his heirs and successors, by his Letters Patent un-
 “der his great Seal, shall nominate and present
 “such person as they will dispose to have the said
 “office and dignity of Archbishop, being void, to
 “any such Archbishop, and two such Bishops, or
 “else, to four such Bishops in this realm, or in any
 “of the King’s Dominions, as shall be assigned by
 “our sovereign Lord, his heirs, and successors,
 “&c.” which act was never confirmed or approved
 by any Act of Parliament in *Ireland*; and yet *Fitz-*
herbert in his *Natura Brev.* fol. 169. saith, that if a
 Bishoprick of *Ireland* be void, that they do sue to
 the King in *England* to go to election of another,
 and after the election made, they must have his
 royal assent to this election upon certificate made
 thereof to the King, and upon that a writ shall be
 directed out of the Chancery of *England* to the
 Chief Justice of *Ireland*, or to his Lieutenant, re-
 hearing all this matter, commanding him to take
 the fealty of the Bishop, and to restore to him the
 temporalities; but now, saith he, the course is in
Ireland, to make such writs there in the name of the
 King, but the King doth name the Bishop there,
 and also in *England*, and then the Chapter shall
 chuse him that the King hath named to them, and
 thereupon the writs are made of course.

Thereupon it may be objected, that a statute
 made *England* is binding in *Ireland*, without any
 approbation of the Parliament there, as in this
 particular case it was, as Justice *Fitzherbert* affirm-
 eth. But hereunto it is answered, that this statute
 consists of several particulars, First, a declaration
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of the King's right and prerogative by the antient Common Law, and the restitution thereof to the Crown. Secondly, an advice how, and in what manner, the King may use his prerogative, as appears by that branch of the statute before specified; for the words are not compulsive, that the King shall grant a *Conge de' eslier*, but the words are, that the King, his heirs and successors, may grant a Writ of *Conge de' eslier*. as of old time hath been accustomed, with a *Letter Missive*, containing the name of the person to be elected. And in default of such election, the King, his heirs, and successors, at their liberty and pleasure, shall nominate and present by their Letters Patents under the great Seal a person to the said office and dignity, so being void, as they shall think able and convenient for the same. Another part of the said statute is penal to the Archbishops, and Bishops, and likewise to the Deans and Chapters, if they do not proceed to the election and consecration according to that branch of this statute, which is above rehearsed; and therefore, those branches of the said statute, as are declaratory of the Common Law, are, and ought to be of force in *Ireland*, without any approbation thereof by the Parliament there: and the writ of *Conge d' eslier* is not grounded upon this statute of 25 *Hen.* 8. but was long before, as appears by the Register, fol. 294, and 295, and by this statute itself. And that this statute of 25 *Hen.* 8. is a declaration of the Common Law, is proved, and excellently declared, by the statute 25 *Edw.* 3. *De provisoribus*, and also by another statute therein recited made at *Carlisle* in 25 *Edw.* 1. For by the Common Law the King is founder and patron of all Archbishopricks, and Bishopricks, and of common right to him only it belongeth to have the nomination and placing of such persons in and to the same, as he shall think fit; and this likewise ap-

pears by the statute of 1 *Edw. 6. Chap. 2.* made in
England, whereby it is declared, that the election of
 Archbishops, and Bishops, by the Deans and Chap-
 ters, within the realms of *England* and *Ireland*, be as
 well to the long delay, as to the great costs and
 charges of such persons, as the King giveth any
 Archbishopricks or Bishopricks unto; and that the
 said elections be indeed no elections, but only by
 writ of *Conge d' eslier*, have colours, shadows, or
 pretences of elections serving nevertheless to no
 purpose, and seem only derogatory and prejudicial
 to the King's prerogative royal, to whom only ap-
 pertaineth the collation and gift of all Bishopricks
 within his Highness's realms of *England* and *Ireland*;
 and the like declaration was made in *Ireland* by
 act of Parliament in *Anno 2 Eliz. Chap. 4.* so as
 upon the whole matter it was in the King's elec-
 tion after the statute 25 *Hen. 8.* and until the statute
 1 *Edw. 6.* in *England*, and 2 *Eliz.* in *Ireland*, to con-
 fer Archbishopricks and Bishopricks, either accord-
 ing to the ancient form of *Conge d' eslier*, or by his
 Letters Patents, according to the said statutes of
 25 *Edw. 3.* 1 *E. 6.* and 2 *Eliz.* or according to his
 ancient right or prerogative by the Common Law;
 and the statute of 25 *Hen. 8.* is no impediment
 thereunto; for in 14th *Eliz. Chap. 7.* it is enacted,
 that the Lord Chancellor, Lord Treasurer, and the
 Judges in *Craftino animarum*, shall nominate a Sher-
 riff for every county, notwithstanding such statute
 in 5. 6. *Edw. Dier. fol. 214.* was ruled by the opi-
 nion of *Cateline*, Chief Justice of the King's Bench,
Dier, Chief Justice of the Common Pleas, and the
 rest of the Judges, that although no Sheriff were
 named by the Judges, according to the statute 14
Eliz. the Queen by her prerogative may make a
 Sheriff, without any such election; and that the
 same statute was not any impediment thereunto.
 Hereby it appeareth, that King *Henry* the 8th. by
 his

his ancient right, and royal prerogative, notwithstanding the statute of the 25th, might confer Archbishopricks and Bishopricks by his Letters Patents, without any *Conge d' eslier*, as is mentioned in the said statute; for it was at his election to use the form prescribed by the statute, which is not compulsory, but by way of advice, or to use his ancient prerogative; and for a more clear proof thereof see 33 *Hen. 8. Dier. fol. 156.* and *Cooke lib. 11. fol. 64.* in *Dr. Foster's case*, where many good cases are put, and many good books are cited upon this ground.

Upon serious consideration of all that hath been said formerly, three considerable questions may be moved, *viz.*——First, whether upon the conquest made by King *Hen. 2d.* immediately, *ipso facto*, the kingdom of *Ireland* was inseparably annexed to *England*,, or was subordinate to the jurisdiction of that Parliament or not? Admitting that it were, then 2dly, whether by the said grant of *Hen. 2.* made to his son *John*, the same be not separated and disjointed from the kingdom of *England*, and thereby the regal power which King *Henry 2.* had by the conquest were not totally transferred to King *John*. 3dly, In what capacity King *John* established the laws of *England* in *Ireland* (*viz.*) whether as he was King of *England*, or as Lord of *Ireland*.

The first of these questions may receive this answer, *viz.* that *Ireland*, being a Christian kingdom, the laws thereof did continue, until such time as the conqueror should establish some other laws, or some other form of government therein; which was not done until the 7th year of King *John*; which was twenty eight years after the conquest; during all which time, the ancient laws of *Ireland* continuing, it is manifest, that the laws of *England* had not any footing in *Ireland*; and therefore the
Kingdom

Kingdom of *Ireland*, during that time, could not be subordinate to the Kingdom of *England*, neither could the Parliament of *England* extend their jurisdiction in *Ireland*; all which may be plainly proved out of *Calvin's* case in the 7th part of the Lord *Cooke's* reports; and it doth not follow, that a kingdom gained by conquest, is thereby either annexed or subordinate to the kingdom conquering, but remaineth still a distinct kingdom, as it was before such conquest; for if the laws were otherwise, then the Kingdom of *England* by the conquest of *William* the conqueror should be annexed and subordinate to the Dukedom of *Normandy*; which would have been held strange doctrine in *England* in those days.

The second question may receive this answer, viz. that although the kingdom of *Ireland* had by the conquest (*ipso facto*) been united and annexed to *England*, as in truth it was not, yet the same union is not set so inseparable, but that it might be, and was disjointed by the said grant of King *Hen. 2.* wherein we are to consider not only the bare grant itself, but also the circumstances and solemnities of it. For first, it was made at a great and solemn assembly of a Parliament held at *Oxford*, as appeareth by all the histories of that time. Secondly, King *John* was thereby constituted King of *Ireland*. Thirdly, this whole kingdom was granted unto him without any reservation. Fourthly, that this grant was made by licence of the Pope, which was by him confirmed, being a matter in those times held to be greatly material. And fifthly, it was enjoyed by King *John*, as a separate and distinct kingdom, severed and distinguished apart from the Kingdom of *England* all the time of his father, and likewise of his eldest brother, King *Richard 1* by the space of 33 years, during which time he was absolute Lord of *Ireland*, made divers
Grants

Grants and Charters yet extant in *Ireland*, wherein he stiled himself *Dominus Hiberniæ*, in others, *Dominus Hiberniæ, et Comes Mortoniæ*; by which charters, as well the City of *Dublin*, as many other cities and corporations in *Ireland*, enjoy many other privileges and franchises to this day; and that, after the said grant, neither King *Henry* 2d. nor after him King *Richard* the 1st. never stiled themselves either Kings or Lords of *Ireland*; so as by that grant it appeareth, that King *Henry* 2. was divested of all regal power in *Ireland*; and that the same was really vested in his son *John*: and yet it is true, that where a King hath a Kingdom by descent, the established government whereof is not only regal, but also politick, in that case, the subject hath such interest in the regal protection inherent in the royal person of the King, that the King cannot of himself transfer to any other so absolutely, as utterly to divest himself thereof; no more than the subject can by his own act transfer his allegiance to any other; for by the same law there is a natural obligation between the King and the subjects inherent in both, viz. in the King, protection of his subjects, and in the subjects, fidelity and subjection to the King. But, when a King hath a kingdom by conquest, he may therein establish what form of government he pleaseth, so as the same be not repugnant to the Law of Nature, and the laws of God; and until he have so done, it standeth with reason, that he may transfer that regal dominion acquired by conquest, which is not yet made politick, to another; especially, when it is done by authority and assent of Parliament, as in the case of King *Henry* 2. to his son *John*, it was done; and so the law was then conceived: for by that donation King *John* enjoyed *Ireland*, as a kingdom separate and distinct from the Kingdom of *England*, until the crown of *England* descended upon him; and that the same is yet
a king-

a kingdom separate and distinct from the Kingdom of *England*, it is resolved clearly in *Calvin's* case in the 7th report of *Cooke*; where many notable cases adjudged in *England* in all ages since the *Norman* conquest proving the same, are remembered. Here also may be remembered the resignation of King *John* of the crown of *England* to the *Pope*, which, being done of himself, was void; also the resignation of King *Edward* 2. to his son *Edward* 3. and the resignation of *Richard* 2. to *Henry* 4. both done in Parliament, and therefore held good; but the manner how these resignations were obtained is not fit to be related, but rather to be buried in the grave of oblivion than to be remembered. If King *John*, in the life time of his father, or of his brother King *Rich.* 1. had established the government of *Ireland*, as he did afterwards, to be according to the laws of *England*, then, without all question the statutes made in *England* could not be binding in *Ireland*; the Kingdom of *Ireland* being not then any ways dependent upon the Kingdom of *England*.

Now we come to the third question; in what capacity King *John* established the government of *Ireland* to be according to the laws of *England*, he being then King of *England* by descent, as next heir to his brother King *Rich.* 1. who died without issue, and Lord of *Ireland*, with all regal power thereunto incident by the donation of his Father, and not by descent; and surely, it must of necessity be, by that regal power, which he had by the donation of his father, and not by any power descended to him from his brother. For his brother had no regal power in *Ireland*; and then that which his brother never had, could not descend to him; and so consequently it must of necessity be, that he established the laws in *Ireland*, as lord of *Ireland*, by that regal power which he had by his father's donation,

donation, whereby he made them the proper laws of *Ireland*, and not otherwise: and how *Ireland* should hereby become subordinate to the jurisdiction of the Parliament of *England*, more than the state of *Rome* was to the state of *Athens* for the laws of the twelve tables, *it cannot be conceived*. For if King *John* had ordained, that *Ireland* should have been governed according to the laws of *Scotland*, (as he might have done) it were a strange construction to say, that *Ireland* should be thereby subordinate unto, or any ways dependant upon, the Kingdom of *Scotland*, or subject to the jurisdiction of the Parliament of that kingdom. So as now it is evident, that *Ireland* is a free and distinct kingdom of itself, the government whereof, is as political, and regal, as the Kingdom of *England* is, and the King's Majesty, is supreme head of the body politic of *Ireland*, and that the *Parliament* of *England* hath no more jurisdiction in *Ireland*, than it hath in *Scotland*.

Also, it will be necessary for our better satisfaction to know, by what law it is, that the statutes made in *England* should be binding and of force in *Ireland*, without the approbation of the Parliament there; and whether by the Common Law, or by any Statute Law, or by what other law. If by the Common Law, it must have these two qualities; the first of them is, that it must have reason for its foundation and beginning. The second is, that it must have time for its continuance; for Mr. *Littleton* in the epilogue of his book saith, *Lex plus laudabitur quando ratione probatur*.—That law shall be better authoris'd, when it has its foundation in reason. *St. Germain* saith in his first book, Chap. 4. that the law of *England* is grounded upon six principal grounds.

1. First, upon the law of reason.
2. Second, upon the law of God.
3. Upon divers general customs of the realm.

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4. Upon

4. Upon divers principles, that be called maxims.
5. Upon divers particular customs.
6. And Sixthly, upon divers statutes made in Parliament by the King and Common Council of the realm.

By which it appeareth, that the Common Law must be consonant and agreeable to the law of reason, and not unreasonable; for as well the Common Law, being the general custom of the realm, as every particular custom, must be *ex certa rationali causa usitata* — Must be established upon some certain and reasonable cause, as Mr. *Littleton* saith; and surely there cannot any reasonable cause be shewed, why the lives, liberties, estates, and fortunes of the Prelacy, Nobility, Gentry, and Commons of *Ireland*, should be bound by such laws, as another kingdom or commonwealth shall impose upon them, they being neither party nor privy to the making of them. If the chief city of a kingdom should prescribe to have power to make laws and ordinances for the government of all other cities in the kingdom, such prescription would be adjudged unreasonable and void. *A fortiori*, for one kingdom to make laws to bind another is more unreasonable. In 2 *Hen. 4. fol. 24.* a custom was alleged, that the Commoner shall not put his cattle to graze upon the Common, until the Lord of the Manor first enter and put his cattle upon the land; and this was adjudged an unreasonable custom, and void in law; for by that means it should be in the power of the Lord to defraud the Commoner of his Common. So likewise, if the Parliament of *England* may make laws to be of force and binding in *Ireland*, the subject of *Ireland* may at the pleasure of the Parliament of *England* be disinherited of all the lands, honours, franchises, and liberties, whereof he is inheritable, as well by the laws and statutes of *Ireland*, as by the statute of *Magna Charta*, Chap. 29.

29. made in *England*, and of force in *Ireland*. So likewise it appeareth by St. *Germain* in his 1st. book Chap. 7. that the general customs of the Kingdom of *England*, because they are neither against the law of God, nor against the law of reason, have attained by long usage the force of laws, and are properly called the Common Law of *England*. Many other authorities may be urged to this purpose, viz. the first part of the *Institutes*, fol. 68, 81, 110, 141. And *Littleton*, Sect. 212. and divers others, as well ancient as modern; so as that ground, viz. reason, which indeed is the principal foundation of all laws. is wanting in that case.

The second ground is the law of God, and that is always most consonant to the law of reason, and altogether unchangeable; so as it is most certain there cannot any thing be found by the law of God to prove, that the statutes of *England* should be binding laws in *Ireland*.

The third ground is the general customs of the realms, which will fail altogether in this case; for from the 12th year of King *John*, when the government of *Ireland* was established according to the model of *England*, until the 1st *Hen.* 7. which was almost 240 years, this doctrine was not dreamed of, until *Hussy*, then Chief Justice, upon a sudden motion, without any argument or deliberation, freely bestowed upon *Ireland* all the statutes of *England*; but all the rest of the Judges of the kingdom in the last term before, upon solemn debate, by serious consideration, were of another opinion, and about nine or ten years afterwards the Lord *Cooke* in *Calvin's Case* before remembred broached the like doctrine, but was not so liberal as *Hussy*; for he doth limit it only to such statutes, wherein *Ireland* is particularly named, and for his own proof alledgeth no other authority, but only the writ of error to reverse erroneous judgments in *Ireland*;

which is neither *ad idem*, nor upon the same reason; for the writ of error to reverse erroneous judgments in *Ireland* hath had a long continual usage to warrant the same, whereby it hath obtained the force of a law; the same being neither against the law of reason nor the law of God, nor against any maxim of the Common Law, nor any statute law: especially because the judges of *England*, upon the writ of error, must judge according to the laws of *Ireland*, and not according to any other laws. And also it hath two rules of law to support the same, viz. *A Communi observantia non est recedendum* — There is no departing from common custom, — and also, *Consuetudo est optima legum interpretes* — Custom is the best interpreter of laws. But to warrant the opinion of *Hussy* in *Hen. 7.* or the opinion of the *Ld. Cooke* in *Calvin's Case*, there is neither law of reason, nor usage, nor any other ground of law. Also the *Lord Cooke* in the second part of his institutes fol. 2. will not allow the statutes of *Magna Charta*, which he in the whole course of the exposition thereof holdeth to be but an explanation of the ancient Common Law, to be of force in *Ireland*, until the statute of the 10th *Hen. 7.*; but although he was exceeding well learned, and a great honour and light to the laws of *England*, yet was he in this particular exceedingly mistaken; for King *John* established the Common Law of *England* to be used in *Ireland*, and the statute of *Magna Charta*, being nothing else but the Common Law; then, if this were not established in *Ireland*, nothing was established but a mere shadow, and nothing in substance; and then was *Ireland* almost two hundred and fifty years destitute of the benefit of the laws of *England*, which is a very great oversight and mistaking. For it is apparent in many hundreds of records yet extant in *Ireland*, that all the Common Laws of *England*, thence the time of King *John* in all ages, before the 10th *Hen.*

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7. were put in practice in *Ireland*, and likewise by the statute of 8th *Edw. 4.* made in *Ireland*, all the statutes before that time made in *England*, which might happily be applied to *Ireland*, were enacted to be of force in *Ireland*; so as we may conceive, that the Lord Cooke in *Calvin's* case hath mistaken the law, as well as he hath done in the said case of *Magna Charta*; and then there is no full proof of any such general custom in the case in question; but the contrary is clearly proved by the judgment of the several Parliaments before remembered, and of the Judges in 20th *Hen. 6.* and 2d *Rich. 3.* before recited; and now, as reason hath failed upon the two former grounds, so hath reason and custom, or usage also failed in this third ground.

The fourth ground is certain principles or maxims, whereof there's not any to be found in the books of the Common Law to this purpose.

The fifth ground is particular customs, which be not any way pertinent to the matter in question.

The sixth and last ground is Statute Laws; and most certain it is, that there is not any statute extant, either in *England* or *Ireland*, whereby it is enacted, that any statute made in *England* should be of force in *Ireland*, before the same were approved, and enacted in the Parliament of *Ireland*; but there be many statutes in *Ireland* proving the contrary, whereof some are before remembred in this declaration.

And now, forasmuch as it cannot be denied, that *Ireland* is a kingdom distinct of itself, and so declared by Act of Parliament in 33 *Hen. 8.* Chap. 1. the government whereof being established according to the model of *England*, which was, and is, not only regal, but also politick; so as by that establishment *Ireland* became a body politick of itself, as *England* was then, consisting of the King's Majesty, as supreme head, and of the Peers and Commons,

mons, as members of the same, in such sorts that the Peers and Commons of *England* are not, nor cannot be any part or member of this body politick of *Ireland*, no more than the Peers or Commons of *Ireland* are or can be members of the body politick of *England*; therefore it cannot stand either in law or common reason, that the one body politick should be subordinate or subject to the controul of the other; for then the King's Majesty, which is the head of the one, and also the head of the other, should be both superior and inferior to himself in his royal and politick capacity within itself, which were altogether repugnant. And although *Ireland* doth acknowledge to *England* the precedency and seniority in politick government, yet it must not be forgot chiefly to acknowledge superiority, allegiance and subjection only to the King's sacred Majesty, as next and immediately under God, the Father of the Commonwealth, and supreme head of the politick body thereof; whom God preserve long to govern the same in peace and prosperity, to God's glory, his own honour, and the welfare of all his good and faithful subjects committed to his charge, and let all good subjects not only with their mouths, but also with their hearts, say, *Amen*, *Amen*.

F I N I S.

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